

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 5770 of 2015 (U)

PETITIONER(S):

1. VIJU DAVID, S/O.DAVID,
VIZHAYIL PUTHENVEEDU,
THIRUVANDOOR P.O, CHENGANNUR.
2. DEEPU G, S/O.GOPALAKRISNAN,
DIVYA SANDANAM, THUVAYOOR NORTH,
MANAKKALA P.O, ADOOR.

**BY ADVS.SMT.ASHA ELIZABETH MATHEW
SRI.NIRMAL V NAIR**

RESPONDENT:

**SUB INSPECTOR OF POLICE,
POLICE STATION, CHENGANNUR,
ALAPPUZHA DISTRICT - 688 001.**

BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 5770 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1 : A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF JCB EXCAVATOR BEARING REGISTRATION NO KL-24-A-3661.**
- EXHIBIT P2 : A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF TIPPER LORRY BEARING REGISTRATION NO KL-29-B 5566.**
- EXHIBIT P3 : A TRUE COPY OF THE NOC DATED 16/01/2015 ISSUED BY THE RDO.**
- EXHIBIT P4 : A TRUE COPY OF THE ORDER DATED 13/02/2015 ISSUED BY THE SENIOR GEOLOGIST ALAPPUZHA.**
- EXHIBIT P5 : A TRUE COPY OF THE BUILDING PERMIT ISSUED BY THE SECRETARY,MULAKKUZHA GRAMA PANCHAYATH.**
- EXHIBIT P6 : A TRUE COPY OF THE VEHICLE PASS NO 42 ISSUED TO THE 2ND PETITIONER'S TIPPER LORRY.**
- EXHIBIT P7 : A TRUE COPY OF THE MAHAZAR.**

RESPONDENT(S)' EXHIBITS: - **NIL**

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.5770 OF 2015
.....

Dated this the 3rd day of March, 2015

J U D G M E N T

The petitioners, who are the owners of JCB Excavator bearing registration No.KL-24-A-3661 and Tipper Lorry bearing registration No.KL-29-B-5566 respectively, are aggrieved of the seizure of the vehicles by the respondent on 19.02.2015, alleging that the above vehicles were being used for extraction and loading of ordinary earth.

2. The learned Counsel for the petitioners submits that the petitioners are ready to compound the offence and that an opportunity might be given to get the vehicles released after satisfying the compounding fee.

3. The issue involved in this case is, whether the petitioners, who have been proceeded against in respect of the offences under the Mines and Mineral (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession

Rules, 2015 is entitled to have the offence compounded in view of the desire expressed from their side in this regard.

4. Heard the learned Government Pleader as well.

5. Section 23A of the 'Act' and the relevant Rules enable the parties to have the offence compounded. The Rules specifically stipulate that any offence under the Rules can be compounded subject to the satisfaction of the maximum fine prescribed under the Rules, which is stated as Rs.5,000/-. But in respect of the transportation of sand/earth without any valid pass/sanction, it is stated as an offence under the 'Act' by virtue of the incorporation of Section 4(1A), for which separate penalty is provided under the 'Act' itself. It was in the said circumstance, that this Court has been passing various orders in similar matters enabling the concerned parties to have the interim custody of the vehicle on satisfaction of a sum of **Rs.25,000/-** and also by directing the concerned respondent to consider the application for compounding, if any.

6. A question arose before this Court as to whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions. This issue has already been considered and decided by this Court in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**, holding that, once the offence is compounded, there cannot be any further prosecution proceedings.

7. In view of the law declared as mentioned herein before, there will be a direction to the respondent to consider the application filed by the petitioner to compound the offence; and pass appropriate orders forthwith, subject to satisfaction of a sum of **Rs.25000/-** as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioners.

The writ petition is disposed of.

Sd/-
P.R.RAMACHANDRA MENON
JUDGE

//true copy//

P.S. to Judge

St/-